Supreme Court, U. S.
FILED
DEC 18
MICHAEL RODAK, JR., CLERK

No. 75-506

In the Supreme Court of the United States

OCTOBER TERM, 1975

DOYLE A. BOYD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-506

DOYLE A. BOYD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners argue that the United States' claim for restitution of the costs incurred in the removal of their sunken barge was barred by the statute of limitations.

In approximately July 1967, the Barge CB-482 sank in the Cumberland River near Nashville, Tennessee.[1] The Army Corps of Engineers first became aware of the sunken barge in 1968 and, finding that it constituted a hazard to navigation, took steps to determine its ownership for the purpose of having it removed. The Corps of Engineers found that the barge apparently was owned by petitioner Boyd, and advised him by letter of December 5, 1968, that he must remove the barge pursuant to the Rivers

---

[1]Petitioners assert that "the record in this cause establishes that the barge sank prior to July of 1966 * * * " (Pet. 4). However, the district court found that the sinking occurred in "approximately July, 1967" (Pet. App. II, p. 11).

and Harbors Act of 1899, 30 Stat. 1121, 33 U.S.C. 401 *et seq.* Four more letters were subsequently sent to Boyd requesting removal of the barge; Boyd responded as late as June 3, 1970, with promises that the barge would be removed (Pet. App. III, p. 18).

In July 1970, the Corps of Engineers determined CB-482 had not been raised and initiated bidding procedures to have the barge removed. The contract for removal was awarded to the lowest bidder who completed the removal on May 21, 1971, and was paid on June 21, 1971. On December 18, 1972, the United States initiated this action against Boyd to recover the costs of removing the barge. The complaint was amended on April 16, 1973, to name petitioner Caldwell & Son as a co-defendant (*id.* at 18-19).[2]

After trial, the district court entered judgment in the amount of $14,046 in favor of the United States (Pet. App. II, pp. 9-16). The court of appeals affirmed (Pet. App. III, pp. 17-22). Petitioners seek certiorari solely to review the question whether this action was barred by the statute of limitations.

1. Petitioners argue that the courts below erred in ruling that the statute of limitations began to run from the date that the United States expended funds to raise the barge (June 21, 1971). Petitioners contend that the limitations period began to run "when the plaintiff knew, or with the exercise of reasonable diligence should have discovered his cause of action" (Pet. 3). But petitioners misconceive the nature of the United States' cause of action. The United States has a right to recover monies expended for removal of wrecks under Section 19 of the Rivers and Harbors Act, 30 Stat. 1154, 33 U.S.C. 414. *Wyandotte Transportation Co.* v. *United States*, 389 U.S. 191, 204. This cause of action, which is in the nature of restitution, does not arise until the actual expenditure of

[2]In answering interrogatories posed by the United States, Boyd claimed for the first time that he had purchased the barge for his employer, H.W. Caldwell & Son, Inc. The United States therefore amended its complaint to add Caldwell & Son as a co-defendant.

funds. See ALI, *Restatement of Restitution*, §115 (1936). Consequently, the United States' cause of action first accrued on June 21, 1971, the date the money was expended, as both courts below correctly held. Since suit was filed on December 18, 1972, the claim was brought well within any applicable period of limitation. See 28 U.S.C. 2415.[3]

2. In any event, this suit was timely regardless whether the statute runs from the sinking of the barge or from the payment of money. For the purposes of statutes of limitations, restitutionary actions are considered as contract claims. ALI, *Restatement, supra*, §5(1)(b). The applicable limitations period is six years on contract suits brought by the United States. 28 U.S.C. 2415(a).[4] Since the district court found that the barge sank in approximately July 1967, and both defendants were made party to the suit well prior to July 1973, the action was timely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1975.

[3]There is no substance to petitioners' suggestion (Pet. 4) that the decisions below encourage the United States to wait extended periods before removing sunken wrecks. As the court of appeals correctly observed (Pet. App. III, p. 21), as a practical matter the government is not likely to delay, because it is potentially liable to third parties who suffer damage as a result of sunken wrecks.

[4]28 U.S.C. 2415(a) provides in part that "every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues * * * ."

DOJ-1975-12